

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

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DATE: February 22, 2001

TO: Orange County Zoning Administrator

FROM: Planning and Development Services Department/Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA00-0123 for Variance, Use Permit and Site Development Permit.

PROPOSAL: The applicant request approval of variances to the front and rear setback in association with the construction of a new multi-level single-family dwelling. A Use Permit is request for over height walls in the front setback area. A Site Development Permit is required for grading.

LOCATION: In the community of Emerald Bay, inland of Pacific Coast Highway at 540 Emerald Bay, Laguna Beach. Fifth Supervisorial District

APPLICANT: Rod Wilger, property owner; Michael Luna & Associates, agent

STAFF William V. Melton, Project Manager

CONTACT: Phone: (714) 834-2541 FAX: (714) 834-4652

SYNOPSIS: Current Planning Services Division has determined that the applicants Use Permit, Variance and Site Development are typical of previously approved discretionary permits in Emerald Bay and recommends Zoning Administrator approval of PA00-0123 subject to the attached Findings and Conditions of Approval.

BACKGROUND:

The applicant proposes to construct a new 6,000 square foot multi-level, single-family dwelling on an irregular shaped 7,128 square foot lot. The site is a through lot with an average grade elevation change of 30 feet, or a slope greater than 35 percent, between the front and rear streets. In order to construct the proposed dwelling and to stay within the Emerald Bay height restrictions, the applicant is requesting the following modifications to the standard site development requirements:

- A Use Permit to allow retaining walls in the front setback area at 6 feet in height when wall heights of 3 ½ feet are permitted in the front setback area;
- Variances to certain site setback standards to permit:
 1. A front building setback of 8'-10" when a setback of 13 feet is required;

2. A rear building setback of 11'-6" when a setback of 20 feet is required;
3. A garage entrance setback (driveway length) of 11'-6" from the street curb when a setback of 18 feet is required; and

Additionally, a Site Development Permit is required for the proposed grading because it is in excess of 500 cubic yards of material on a property slope in excess of 15 percent. The grading proposed exceeds 2,000 cubic yards, mostly cut material exported from the site.

SURROUNDING LAND USE:

The project site and all surrounding properties are zoned R1 (CD) and developed with single-family dwellings. Emerald Bay also has a certified Local Coastal Program. All properties ocean side of Pacific Coast Highway are also subject to regulations contained in Zoning Code Section 7-9-118 "Coastal Development" District. In general, property owners are required to obtain approval of a Coastal Development prior to demolishing or making large additions to an existing residence and/or construction of a new dwelling. Properties located inland of Pacific Coast Highway, such as the subject site, are not subject to the CD regulation and are not subject to obtaining a Coastal Development Permit.

REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to six County Divisions and the Emerald Bay Community Association.

As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions. The proposal has received preliminary approval from the Emerald Bay Community Association.

CEQA COMPLIANCE:

Negative Declaration No. PA000123 (Exhibit 2) has been prepared for this proposal. It was posted for public review on January 30, 2001 and became final on February 20, 2001. Prior to project approval, the Zoning Administrator must find this ND adequate to satisfy the requirements of CEQA. Appendix A contains the required CEQA Finding.

DISCUSSION/ANALYSIS:

The proposed Site Development Permit for grading in excess of 500 cubic yards and the Use Permit for over height walls in a setback area are not unlike previous requests for new home construction in Emerald Bay, especially in this hilly northern portion of the community. The grading proposed is mainly under the

footprint of the proposed structure. Retaining walls are required in the setback areas to provide terrace area in the front and to provide for light and air in the sides and rear. Staff does not see any planning issues with these two portions of the Planning Application.

There may be an issue with the proposed rear yard setback variance. Front and rear setback variances are sometimes a sensitive issue in Emerald Bay. This is because the CC&Rs permit front and rear setbacks of only 5 feet and the Emerald Bay's R1 zoning standard for front and rear setbacks standard is much greater. In addition to setbacks there is also structure height issues between the Zoning Code and the Emerald Bay CC&Rs. In general, the Zoning Code would permit a structure on this lot up to a height 35 feet above finished grade. In addition to the height requirements, the CC&Rs has a maximum lot coverage of 40 percent, while the Zoning Code has no such requirement.

Along with setback variances, there is also the issue of ocean views. The Zoning Code does not have regulation regarding views. On the other hand property owners in the community have great concern for ocean views. To address ocean views, the Emerald Bay CC&Rs contains regulations pertaining to views that address structure height. As an example, the CC&Rs for the subject site has a height restriction that structure be no more than 20 feet above natural grade, with a maximum height of no more than 15 feet above highest point of the lot. Additionally, before any home can be built, the Emerald Bay Community Association conducts one or more public meetings on each new home proposed. It is staff's understanding any issues concerning views is resolved at these Community Association meetings.

The proposed garage entrance setback is similar to other variances approved for garage setbacks for new home construction in the northern area of Emerald Bay. A typical garage setback request is for 5 to 6 feet from the back of the curb. Garages are placed closer to the street on steep sloping lots in order to reduce the amount of grading and over height walls that would otherwise be required. The Traffic Review Section recommended the standard condition for site distance for this proposal. There is adequate maneuvering area behind the garage and staff does not see an issue with the proposed garage setback.

Staff is of the opinion that the Site Development Permit for grading, the Use Permit for over height walls, and the front and rear yard setback Variances proposed are typical of previously approved proposals throughout Emerald Bay. The proposal appears to be compatible with the properties adjacent to the subject site. However, before this variance request can be approved, the Zoning Administrator, in accordance with State and County planning laws, must be able to make the following variance findings listed below. If the Zoning Administrator cannot make these findings, the application must be disapproved.

- 1. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.*
- 2. Approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.*

Staff is of opinion that the Zoning Administrator is able to make these two special variance findings. The special circumstances for approving the variance requested for this proposal are in Finding No. 10 of

Appendix A. Because the requested variance is typical of previously approved setback variances, staff can support the proposed rear setback variance, the grading and over height retaining walls. Staff makes a recommendation as follows.

RECOMMENDED ACTION:

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA00-0123 for Variance, Use Permit and Site Development Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Chief
CPSD/Site Planning Section

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APPENDICES:

- A. Recommended Findings
- B. Recommended Conditions of Approval

EXHIBITS:

1. Applicant's Letter of Explanation
2. Environmental Documentation
3. Site Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana.